STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. WILLIAM C. HULTGREN

Judge, 19th District Court
16077 Michigan Avenue
Dearborn, MI 48126

Formal Complaint No. 82

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DECISION AND RECOMMENDATION
FOR ORDER OF DISCIPLINE

At a session of the Michigan Judicial Tenure Commission held on July 14, 2008, in the City of Detroit

PRESENT:

Hon. Barry M. Grant, Chairperson
Hon. Kathleen J. McCann, Vice Chairperson
Thomas J. Ryan, Esq., Secretary
Hon. Jeanne Stempien
Hon. Michael J. Talbot
Nancy J. Diehl, Esq.
Ronald F. Rose
Hon. Nanci J. Grant
Marja M. Winters

I. Introduction

The Judicial Tenure Commission of the State of Michigan ("Commission") files this recommendation for discipline against Hon. William C. Hultgren ("Respondent"), who at all material times was a judge of the 19th District Court in

the City of Dearborn, State of Michigan. This action is taken pursuant to the authority of the Commission under Article VI, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

On March 31, 2008, the Commission received findings of fact and conclusions of law from the Master appointed by the Supreme Court to hear evidence in this matter. Having reviewed the transcript of the hearing, the report, the exhibits, and having considered the oral arguments of counsel, the Commission concludes, as did the Master, that the Examiner has established by a preponderance of the evidence each factual allegation set forth in the Complaint.

The Commission rejects the Master's conclusions of law. Based on the facts established at the hearing before the Master, we conclude that Respondent's conduct was judicial misconduct in violation of Const 1963, Art. 6, § 30, MCR 9.104(A)(1), (2), (3), and (4), MCR 9.205, and the Michigan Code of Judicial Conduct ("MCJC"), Canons 1, 2A, and 2C. Accordingly, the Commission recommends that the Supreme Court publicly censure Respondent and suspend him from exercising his judicial duties for a period of sixty (60) days without pay.

II. Procedural Background

On July 10, 2007 the Commission filed Formal Complaint No. 82 asserting a single count against Respondent. The Complaint alleged that by (i) meeting with Hussein Dabaja about a pending case, (ii) drafting a letter about the case to

Thomas D. Hocking, counsel for the party opposing Mr. Dabaja, and (iii) referring to Mr. Hocking as "a lawyer in a credit card collection mill," Respondent committed judicial misconduct in violation of Const 1963, Art. 6, § 30, MCR 9.104(A)(1), (2), (3), and (4), MCR 9.205, and the Michigan Code of Judicial Conduct, Canons 1, 2A, and 2C.

The Respondent filed an Answer and Affirmative Defenses on July 20, 2007. On July 24, 2007, the Supreme Court appointed the Norma Y. Dotson Sales, a retired judge of the 36th District Court, to serve as Master to take proofs regarding the allegations contained in Formal Complaint No. 82. The Master conducted a hearing and on March 31, 2008, issued a fourteen page report in which she found that the facts alleged in the Complaint had occurred, but did not constitute judicial misconduct on the part of Respondent.

On April 16, 2008, the Examiner filed written objections to the Master's report and a brief in support of the objections. On May 1, 2008, Respondent filed a petition to adopt the report of the Master and a brief in support of the petition. The Commission heard oral argument on Respondent's objections on May 12, 2008.

III. Standard Of Proof

The standard of proof applicable in judicial disciplinary matters is the preponderance of the evidence standard. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998). The Examiner bears the burden of proving set forth in the

Complaint. MCR 9.211(A). The Commission reviews the Master's findings de novo. *In re Chrzanowski*, 465 Mich 468, 480-481; 636 NW2d 758 (2001). Although the Commission is not required to accept to the Master's findings of fact, it may appropriately recognize and defer to the Master's superior ability to observe the witnesses' demeanor and comment on their credibility. Cf. *In re Lloyd*, 424 Mich 514, 535; 384 NW2d 9 (1986).

IV. Findings Of Fact

In the fall of 2006, a man named Ali Beydoun arranged a meeting with Respondent to discuss a legal problem faced by a man named Hussein Dabaja. Hussein Dabaja was the cousin of Mr. Beydoun's business partner, Frank Dabaja. Respondent was acquainted with Mr. Beydoun but did not know the Dabaja cousins. A meeting between Respondent, Mr. Beydoun, and the Dabaja cousins took place in Respondent's chambers on October 16, 2006. At the meeting, Hussein Dabaja stated that he was a defendant in a civil debt collection proceeding, but claimed that it was a case of mistaken identity and that a different person with the same name had incurred the debt in question. In support of his position, Hussein Dabaja presented to Respondent his passport and his social security number.

Respondent asked his secretary to check Mr. Dabaja's name in the court's computer docketing system, which revealed that the case *Asset Acceptance*

Corporation v Hussein Dabaja, was pending in the 19th District Court assigned to Judge Mark W. Somers. The docket system indicated that a default had been entered against Hussein Dabaja.

Instead of refraining from any further involvement in the matter, Respondent placed a telephone call to the office of attorney Thomas D. Hocking, the man who the docketing system listed as counsel for Asset Acceptance Corporation in the *Dabaja* case. Respondent was unable to reach Mr. Hocking, but spoke with Mr. Hocking's litigation secretary for a few minutes about the *Dabaja* case.

Respondent then caused a letter to be faxed to Mr. Hocking. The letter from Respondent to Mr. Hocking, dated October 16, 2006, described Hussein Dabaja's assertions regarding the alleged mistaken identity and asked Mr. Hocking to "look into the matter and take whatever action is appropriate." Respondent's letter to Mr. Hocking was written on paper bearing Respondent's official 19th District Court letterhead. The Commission agrees with The Master's finding that the letter was intended to influence Mr. Hocking's handling of the *Dabaja* case.

When Judge Somers subsequently learned of Respondent's meeting with Hussein Dabaja and letter to Mr. Hocking, he sent a memo asking Respondent to explain his involvement in the case. When Respondent did not answer the first memo from Judge Somers dated December 14, 2006, Judge Somers sent a second similar memo dated January 2, 2007. In reply to Judge Somers' second memo,

Respondent described his actions as "an isolated good faith by a judge to request a lawyer in a credit card collection mill to take a second look at objective facts supporting a default judgment against a non-English speaking immigrant and take whatever action he may deem appropriate."

Our findings are consistent with the Master's findings regarding the factual basis for the Complaint.

V. Evidentiary Matters

During oral argument, the Examiner inadvertently stated that the Attachment 3 to Respondent's Petition to Adopt the Report of the Master had been introduced as evidence at the hearing before the Master. Attachment 3 was not introduced as evidence at the hearing before the Master. Accordingly, the Examiner's reference to Attachment 3 being admitted into evidence before the Master is stricken from the record and is not considered as a basis for this Decision and Recommendation for Order of Discipline.

VI. Conclusions Of Law

The facts asserted in the Complaint and established at the public hearing in this matter show, by a preponderance of the evidence, that Respondent breached the standards of judicial conduct and is responsible for all of the following:

- Misconduct in office as defined by the Michigan Constitution of 1963, as amended, Article VI, § 30 and MCR 9.205;
- Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article VI, § 30, MCR 9.104(A)(1), and MCR 9.205;
- Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to MCJC, Canon 1;
- Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of MCJC, Canon 2A;
- Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, in violation of MCJC, Cannon 2A;
- Allowing family, social or other relationships to influence judicial conduct or judgment, in violation of MCJC, Canon 2C;
- Using the prestige of office to advance personal business interests or those of others contrary to MCJC, Canon 2C;
- Exposure of the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2);
- Conduct which is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3); and
- Conduct that violates the standard or rules of professional responsibility adopted by the Supreme Court, contrary to MCR 9.104(A)(4).

Respondent violated each of the aforementioned standard of judicial conduct when he took it upon himself to assume the role of Hussein Dabaja's advocate in a matter pending before another judge of the 19th District Court. Although there appear to be no cases directly on point, it is well-settled that a judge commits misconduct when he or she uses the prestige of his or her office to influence the administration of justice. See MCJC, Canon 2C; *In re Matter of Del Rio*, 400 Mich 665, 704-709; 256 NW2d 727 (1977); see also *Mississippi Comm'n on Judicial Performance v Blakeney*, 848 So2d 824 (Miss 2003); *In re Snow's Case*, 674 A2d 573 (NH 1996); *In the Matter of Ramirez*, 135 P2d 230 (NM 2006).

Respondent did exactly that when he mailed a letter on official court letterhead advocating the defendant's position regarding mistaken identity and asking Attorney Hocking to take a second look at a matter in which he had already obtained a default judgment. Respondent's actions placed Mr. Hocking in a difficult position because the letter advocating his adversary's argument came from the court in which the matter was pending and from a judge before whom Mr. Hocking might later appear on other matters. To function properly our system of justice depends on the resolution of adversarial disputes by neutral courts. It cannot operate as designed if the clear lines demarcating the province of the neutral judge from the advocate become blurred. The problem caused by his advocacy was only compounded when Respondent, in a communication to the judge

assigned to the case, disparaged Mr. Hocking as a lawyer working for a "credit card collection mill."

Respondent asserts, and the Master concluded, that Respondent's actions were taken in good faith and constituted nothing more than well-intentioned acts of poor judgment. In determining whether misconduct has occurred, we must view Respondent's actions objectively, irrespective of his asserted good intentions. See, e.g., *In re Haley*, 476 Mich 180, 192 n 17; 720 NW2d 246 (2006); see also *In re Merritt*, 431 Mich 1211; 432 NW2d 170 (1988). Whatever his intentions may have been, Respondent should have known better than to get involved in this case as a de facto attorney for Hussein Dabaja.

VII. Disciplinary Analysis

A. The *Brown* Factors

The Michigan Supreme Court set forth the criteria for assessing proposed sanctions in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999). A discussion of the relevant factors follows.

(1) *Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.*

There is no evidence of a pattern of misconduct. Accordingly, this factor weighs in support of a less serious sanction.

(2) ***Misconduct on the bench is usually more serious than the same misconduct off the bench.***

Although Respondent used the prestige of his judicial position to advocate on behalf of Mr. Dabaja, the misconduct did not occur within a case pending before Respondent and, therefore, must be deemed to have occurred off the bench. Accordingly, this factor weighs in support of a less serious sanction.

(3) ***Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.***

Respondent's action were not, in fact, prejudicial to the administration of justice because there is no evidence that Attorney Hocking handled the case any differently in response to Respondent's invitation. Accordingly, this factor weighs in support of a less serious sanction.

(4) ***Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does.***

This factor strongly favors a more severe sanction. Respondent's actions clearly implicated the administration of justice because he attempted to influence the handling of a court proceeding to which he was not assigned. Additionally, his comments regarding the "credit card collection mill" indicates a bias against collection attorneys.

(5) ***Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.***

Respondent's actions in this case were clearly premeditated and deliberate. Respondent later admitted that he knew his actions were not proper but that he took them anyway. This factor weighs in favor of the imposition of a more severe sanction.

(6) ***Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.***

Respondent's actions did not undermine the ability of the justice system to discover the truth. Accordingly, this factor weighs in support of a less serious sanction.

(7) ***Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.***

The evidence does not show that Respondent's actions caused the unequal application of justice on the basis of a class of citizenship. Accordingly, this factor, alone, does not weigh in favor of a more severe sanction.

In sum, two of the seven *Brown* factors—actions that implicate the administration of justice and actions that are premeditated and deliberate—favor a more severe sanction.

B. The Basis for the Level of Discipline and Proportionality

In determining an appropriate sanction in this matter, the Commission is mindful of the Michigan Supreme Court's call for "proportionality" based on comparable conduct. Based on the facts, the Commission believes that a public censure and suspension without pay for a period of sixty (60) days is an appropriate and proportional sanction for Respondent's judicial misconduct.

As noted above, to function properly our justice system requires the existence of a clear line demarcating the role of adversarial attorney from the role of neutral judge. Respondent's actions taken on behalf of Mr. Dabaja, a defendant in a case proceeding before a different judge, obliterated the line between attorney and judge. In that regard, we note that Respondent's misconduct is factually unique and not easily compared to the various transgressions committed by other Michigan judges.

In our collective judgment, considering the facts that (1) the line between advocate and judge is so clear in our tradition of justice, (2) Respondent's actions constituted a specific attempt to influence the handling of a pending action, and therefore directly implicated the administration of justice, and (3) Respondent's actions were premeditated, deliberate, and taken against Respondent's own better judgment, we conclude that a public censure plus sixty (60) days sanction would be an appropriate and proportionate level of discipline.

VII. Conclusion and Recommendation

The Commission concludes that Respondent committed judicial misconduct. Based on the nature of the misconduct, the Commission recommends that the Michigan Supreme Court publicly censure Respondent and suspend him from exercising his judicial duties for a period of sixty (60) days without pay.

JUDICIAL TENURE COMMISSION

HON. BARRY M. GRANT
Chairperson

HON. KATHLEEN J. McCANN
Vice-Chairperson

THOMAS J. RYAN, ESQ.
Secretary

HON. JEANNE STEMPIEN

NANCY J. DIEHL, ESQ.

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We concur in the Commission's findings of fact and conclusions of law, but dissent from the Commission's recommended sanction. In our view, considering Respondent's blatant misconduct, the sanction recommended by the majority of the Commission would not sufficiently remedy the damage to the integrity of the

judicial process caused by Respondent's actions. In our view, a more appropriate sanction would be public censure and suspension without pay for a period of one year.

Respondent's misconduct in this case goes to the very core of the judicial function. A judge's job is to resolve disputes within the confines of the adversary process. Here, Respondent inserted himself into a case pending before another judge and acted as a *de facto* attorney for one of the parties. The Master found that, in so doing, Respondent intended to influence the other attorney's handling of the case. Notwithstanding her finding that Respondent intentionally sought to influence the handling of a case that was pending before a different judge, the Master inexplicably concluded that Respondent's actions did not rise to the level of misconduct.

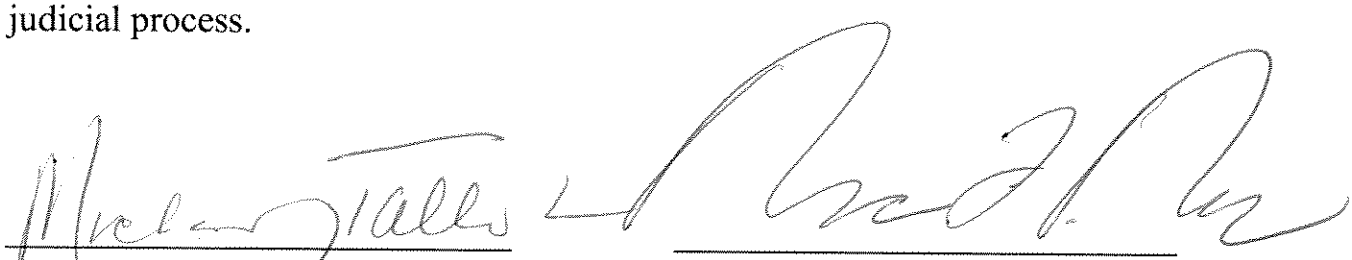
In our view, there is no way that Respondent reasonably could have thought his intervention was anything but judicial misconduct. Simply stated, there are no circumstances under which a judge properly may place a telephone call and write a letter on behalf of one party, to the office of an attorney for the opposing party, in an attempt to influence the handling of a case pending before a different judge. The fact that Respondent undertook this course of action despite knowing it to be wrong shows a disturbing lack of respect for the integrity of the judicial process.

Under the guidance of *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999), Respondent's conduct in this case merits a severe sanction. It was deliberate and implicated the actual administration of justice. This was not a mere case of neglect by a well-intentioned judicial officer. By crossing the line existing between judge and attorney, and proceeding to act as Hussein Dabaja's advocate, Respondent knowingly and deliberately breached a foundational standard of judicial ethics.

After meeting with his "acquaintance" regarding the pending case and investigating its status on the court's docketing system, Respondent had to have realized that further court proceedings would be necessary to obtain entry of the judgment and to collect on the judgment. Despite this knowledge, Respondent telephoned and wrote to opposing counsel's office with the intention of influencing how the matter would be handled. Danielle Groppi, opposing counsel's legal secretary, testified that she was ninety percent sure Respondent told her that the case should be dismissed. To make matters worse, Respondent then drafted a letter to Mr. Hocking—on court letterhead—specifically advocating Mr. Dabaja's position.

Given the clarity of the standard transgressed, Respondent's actions can only be described as grossly unethical. This was not merely poor judgment. Respondent deliberately acted in another judge's case on behalf of one of the

litigants. Under these facts, public censure plus a suspension of one year without pay would best accomplish the remedial function of preserving the integrity of the judicial process.



HON. MICHAEL J. TALBOT

RONALD F. ROSE